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Notice of Allowability	Application No.	Applicant(s)	
	10/027,792	ADLER, JOHN R.	
	Examiner	Art Unit	
	Parikha S. Mehta	3737	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to Applicant's request for continued examination (RCE) filed 16 April 2007.
2. ☒ The allowed claim(s) is/are 30-32, 34-56 and 66.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.
THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☒ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☒ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

- | | |
|--|--|
| <ol style="list-style-type: none"> 1. <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) 2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) 3. <input checked="" type="checkbox"/> Information Disclosure Statements (PTO/SB/08),
Paper No./Mail Date <u>4/16/07</u> 4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit
of Biological Material | <ol style="list-style-type: none"> 5. <input type="checkbox"/> Notice of Informal Patent Application 6. <input type="checkbox"/> Interview Summary (PTO-413),
Paper No./Mail Date _____. 7. <input checked="" type="checkbox"/> Examiner's Amendment/Comment 8. <input type="checkbox"/> Examiner's Statement of Reasons for Allowance 9. <input type="checkbox"/> Other _____. |
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EXAMINER'S AMENDMENT

1. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

The following amendments were discussed with and approved by Applicant's representative, Jennifer Hayes, on 25 May 2007:

Claim 33 is canceled as being a substantial duplicate of claim 30. Claim 33 recites the limitation of anchoring the fiducial in the target region, a step already recited in amended claim 30.

Claims 57-60 are canceled without prejudice for being directed towards an embodiment that is patentably distinct in structure and function from all other claimed embodiments of the instant application. Applicant maintains the right to file a separate, divisional application for patent for this embodiment at a later time.

2. The following changes to the drawings have been approved by the examiner and agreed upon by applicant: Applicant agrees to replace all handwritten matter with typed, formal matter. In order to avoid abandonment of the application, applicant must make these above agreed upon drawing changes.

3. The following is an examiner's statement of reasons for allowance: Claims 30-32, 34-56 and 66 are drawn towards a method and system of depositing a fiducial marker into a target region of a patient and performing stereotaxic radiosurgery on the target region of the patient according to the detected fiducial and location of the target region, wherein the fiducial marker comprises a body portion having a housing and an anchor member drawn into such housing, the anchor member being withdrawn from the housing after entry in the target region to penetrate the tissue and prevent migration of the marker. The closest prior art, Foerster et al (US Patent No. 6,228,055), made of record by Applicant, teaches a fiducial marker comprising an anchor member having anchored an unanchored positions and operable to penetrate a target region of tissue. However, the prior art does not fairly teach or suggest a marker additionally comprising a housing into which the anchor member is drawn in an unanchored position, and from which the anchor member is withdrawn in the anchored position. The claimed housing element sufficiently distinguishes the instant invention over the prior art, and accordingly claims 30-32, 34-56 and 66 are allowed.

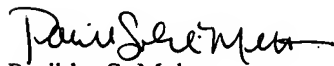
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Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Parikha S. Mehta whose telephone number is 571.272.3248. The examiner can normally be reached on M-F, 8 - 4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Casler can be reached on 571.272.4956. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Parikha S. Mehta

Examiner – Art Unit 3737


ELENI MANTIS MERCADER
SUPERVISORY PATENT EXAMINER